

Nadler Investigates the FBI's Use of Exigent Letters in Acquiring Private Records

Wednesday, 14 April 2010

WASHINGTON, D.C. - Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing on a Report by the Office of the Inspector General (OIG) of the Department of Justice on the Federal Bureau of Investigation's (FBI) Use of Exigent Letters and Other Informal Requests for Telephone Records. The hearing explored the findings of the OIG report and considered to what extent the FBI acted outside of the law in its collection of private telephone records between 2003 and 2006.

"The findings of the Inspector General's report are disturbing," said Nadler. "The report details hundreds of instances in which the FBI violated the law and its own internal rules concerning the collection of telephone records. The IG identified violations of the Electronic Communications Privacy Act as well as the USA PATRIOT Improvement and Reauthorization Act of 2005. While it should be reassuring that the practice of issuing exigent letters has been stopped, the reckless disregard for the law and the privacy rights of the American people does not bode well for the future. We have laws for a reason, and, the people who wrote our Constitution did not believe that trust and assurances were sufficient to protect our rights."

Between 2003 and 2006, the FBI issued more than 700 so-called exigent letters to obtain records related to several thousand telephone numbers. Exigent letters were accompanied by little, if any, legal process. Instead, the FBI issued written requests for immediate access to information because of allegedly "exigent circumstances," and promised to follow up with appropriate legal process - in most cases, a subpoena - at a later date, which often never materialized. These letters rarely specified the nature of the emergency, often contained factual inaccuracies, and appear to have been used without the knowledge or approval of senior FBI officials.

In January 2010, the Department of Justice's Inspector General released "A Review of the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records," a report describing the results of OIG's investigation into the FBI's use of exigent letters to obtain information from certain telecommunications companies. At today's hearing, witnesses were: Valerie E. Caproni, General Counsel for the Federal Bureau of Investigation, and Glenn A. Fine, Inspector General for the United States Department of Justice.

The following is Nadler's opening statement, as prepared:

"Today's hearing examines the latest report by the Inspector General of the Justice Department on the use of exigent letters and other informal requests for telephone records by the Federal Bureau of Investigation.

"This report follows two earlier reports by the IG's office, in March 2007 and March 2008, on the use of National Security Letters, which did not look at the use of exigent letters in depth.

"This latest report does just that. The findings are disturbing. It details hundreds of instances in which the FBI violated the law and its own internal rules concerning the collection of telephone records. The Inspector General identified violations of the Electronic Communications Privacy Act as well as the USA PATRIOT Improvement and Reauthorization Act of 2005.

"Even more disturbing, this is not the first time we have had to have the Inspector General and the FBI here to explain why the law was violated, why the privacy of law abiding Americans was illegally invaded, and - at this point - why repeated assurances that the problem was solved, amounted to so little.

"While it should be reassuring that the practice of issuing exigent letters has been stopped, the reckless disregard for the law and the privacy rights of the American people does not bode well for the future.

"We have laws for a reason, and it is not reassuring to have the IG come here yet again to tell us that those responsible for enforcing the laws appear to have a problem with obeying the law. That is unacceptable.

"The people who wrote our Constitution did not believe that trust and assurances were sufficient to protect our rights. The government is required under our Constitution to answer to an independent judiciary before it can invade our privacy.

"To the extent that the 4th Amendment has been found not to reach certain surveillance, Congress has attempted to enact legislation to balance the needs of law enforcement with the rights of individuals. Self-regulation, however, as the founders correctly understood, provides poor protection for our rights.

"In addition to examining the IG's findings, and how the FBI intends to respond to those findings, the Subcommittee will be reviewing the current status of the Electronic Communications Privacy Act to determine whether technological advances over the years require that we update the Act, and whether we must amend the Act, perhaps with criminal sanctions to avoid government officials acting in total contempt of the law and of the legitimate privacy rights of law abiding citizens. But, that is a matter for another day.

"I want to welcome our witnesses. I look forward to your testimony."